



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1106]

Certain Toner Cartridges and Components Thereof

Notice of a Commission Determination to Affirm an Initial Determination Granting Respondents' Motions for Summary Determination of Non-Infringement; Finding of No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the initial determination ("ID") (Order No. 40) of the presiding administrative law judge ("ALJ") granting certain respondents' respective motions for summary determination of non-infringement. Accordingly, the Commission has determined to find no violation of section 337. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 29, 2018, based on a complaint filed on behalf of Canon Inc. of Tokyo, Japan; Canon U.S.A. Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, “Canon”). 83 FR 13516-17. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,746,826; 9,836,026; 9,841,727 (“the ’727 patent”); 9,841,728 (“the ’728 patent”); 9,841,729; 9,857,764; 9,857,765; 9,869,960; and 9,874,846. The Commission’s notice of investigation named numerous respondents, including: Ninestar Corporation and Ninestar Image Tech Limited, both of Guangdong, China; Ninestar Technology Company, Ltd. of City of Industry, California; and Static Control Components, Inc. of Stanford, North Carolina (collectively, “Ninestar”); Print-Rite N.A., Inc. of La Vergne, Tennessee; Union Technology International (M.C.O.) Co. Ltd. of Rodrigues, Macau; Print-Rite Unicorn Image Products Co. Ltd. of Zhuhai, China; The Supplies Guys, Inc. of Lancaster, Pennsylvania; and LD Products, Inc. of Long Beach, California (collectively, “Print-Rite”); and Aster Graphics, Inc. of Placentia, California; Aster Graphics Co., Ltd. of Guangdong, China; and Jiangxi Yibo E-tech Co., Ltd. of Jiangxi, China (collectively, “Aster”; all collectively, “the active respondents”). The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. The ’727 and ’728 patents have been terminated from the investigation. *See* Order No. 18 (June 28, 2018), *unreviewed by Comm’n Notice* (July 23, 2018).

All other respondents have been found in default or terminated from the investigation based on withdrawal of Canon's allegations as to those respondents. *See, e.g.*, Order No. 11 (May 2, 2018) (ID finding eleven respondents in default); *unreviewed by* Comm'n Notice (May 23, 2018); Order No. 30 (Oct. 22, 2018) (ID terminating the investigation as to a single respondent); *unreviewed by* Comm'n Notice (Nov. 19, 2018). Specifically, the following thirty-five respondents have been found in default: Arlington Industries, Inc. of Waukegan, Illinois; Ourway US Inc. of City of Industry, California; Print After Print, Inc. d/b/a OutOfToner.com of Phoenix, Arizona; GPC Trading Co. Limited d/b/a GPC Image of Kowloon, Hong Kong; ACM Technologies, Inc. of Corona, California; Ourway Image Tech. Co., Ltd., Ourway Image Co., Ltd., and Zhuhai Aowei Electronics Co., Ltd., all of Zhuhai, China; Acecom, Inc. – San Antonio d/b/a InkSell.com of San Antonio, Texas; Bluedog Distribution Inc. of Hollywood, Florida; i8 International, Inc. d/b/a Ink4Work.com of City of Industry, California; Ink Technologies Printer Supplies, LLC of Dayton, Ohio; Linkyo Corp. d/b/a SuperMediaStore.com of La Puente, California; CLT Computers, Inc. d/b/a Multiwave and MWave of Walnut, California; Imaging Supplies Investors, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Reno, Nevada; Online Tech Stores, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Grand Rapids, Michigan; Fairland, LLC d/b/a ProPrint of Anaheim Hills, California; 9010-8077 Quebec Inc. d/b/a Zeetoner of Quebec, Canada; World Class Ink Supply, Inc. of Woodbury, New Jersey; EIS Office Solutions, Inc. and Zinyaw LLC d/b/a TonerPirate.com, both of Houston, Texas; eReplacements, LLC of Grapevine, Texas; Garvey's Office Products, Inc. of Niles, Illinois; Master Print Supplies, Inc. d/b/a HQ Products of Burlingame, California; Reliable Imaging Computer Products, Inc. of Northridge,

California; Frontier Imaging Inc. of Compton, California; Hong Kong BoZe Company Limited d/b/a Greensky of New Kowloon, Hong Kong; Apex Excel Limited d/b/a ShopAt247 of Rowland Heights, California; Billiontree Technology USA Inc. d/b/a Toner Kingdom of City of Industry, California; Kuhlmann Enterprises, Inc. d/b/a Precision Roller of Phoenix, Arizona; FTrade Inc. d/b/a ValueToner of Staten Island, New York; V4INK, Inc. of Ontario, California; Do It Wiser LLC d/b/a Image Toner of Alpharetta, Georgia; Global Cartridges of Burlingame, California; and Kingway Image Co., Ltd. d/b/a Zhu Hai Kingway Image Co., Ltd. of Zhuhai, China.

On November 28, 2018, Print-Rite and Aster each moved for summary determination that their respective accused products do not infringe the asserted patents. On the same date, Ninestar filed an unopposed motion for leave to file a motion for summary determination that its accused products do not infringe the asserted patents. All of the active respondents' motions were contingent on the ALJ construing the asserted claims to require a pivotable coupling member. Also, on the same date, Canon moved for summary determination of infringement with respect to all of the respondents' accused products, both active and defaulting. Canon's motion was contingent on the ALJ construing the asserted claims to require a coupling member that does not need to pivot or incline. On December 10, 2018, Canon stated in its response to the two pending summary determination motions that it would not oppose the motions if the ALJ construed the asserted claims to require a pivotable coupling member. On the same date, OUII filed a response supporting all of the motions for summary determination of non-infringement, including Ninestar's motion for leave to file its motion for summary determination of non-infringement.

On February 28, 2019, the ALJ issued her *Markman* Order (Order No. 38) construing the asserted claims to require a pivotable coupling member. On March 6, 2019, Ninestar moved,

based on the *Markman* Order's claim construction, for summary determination of non-infringement. On March 8, 2019, Canon stated in its response to Ninestar's motion that it would not oppose the motion based on the *Markman* Order.

On March 13, 2019, the ALJ issued the subject ID (Order No. 40) granting each motion for summary determination of non-infringement. In the subject ID, the ALJ also denied Canon's motion for summary determination of infringement as moot. On March 25, 2019, Canon and the Active Respondents each petitioned for review of the subject ID. On April 1, 2019, Canon and the Active Respondents each filed a response in opposition to the other party's petition for review. On the same date, OUII filed a response in opposition to each petition for review.

On May 6, 2019, the Commission determined to review the ID and the underlying *Markman* Order in their entirety and requested the parties to respond to certain questions concerning the issues under review. On May 14, 2019, Canon filed its written submission in response to the Commission questions. Canon stated that it does not seek relief against the defaulting respondents unless the *Markman* Order's construction requiring a pivotable coupling member is modified.

Having reviewed the record of the investigation, including Order No. 40 and the *Markman* Order, the parties' briefing, and Canon's response, the Commission has determined to affirm the subject ID. Accordingly, the Commission finds no violation of section 337. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 20, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019-10848 Filed: 5/23/2019 8:45 am; Publication Date: 5/24/2019]